

April 2004

MJI Publications Updates

Adoption Proceedings Benchbook

**Child Protective Proceedings
Benchbook (Revised Edition)**

**Contempt of Court Benchbook (Revised
Edition)**

**Criminal Procedure Monograph 5—
Preliminary Examinations (Revised
Edition)**

**Criminal Procedure Monograph 6—
Pretrial Motions (Revised Edition)**

**Juvenile Justice Benchbook (Revised
Edition)**

Juvenile Traffic Benchbook

Sexual Assault Benchbook

**Traffic Benchbook—Revised Edition,
Volume 1**

**Traffic Benchbook—Revised Edition,
Volume 2**

Update: Adoption Proceedings Benchbook

CHAPTER 2

Freeing a Child for Adoption

2.13 Termination Pursuant to a Step-Parent Adoption

C. Grandparent Visitation

Insert the following text on page 65, immediately before Section 2.14:

In *Johnson v White*, ___ Mich App ___, ___ (2004), the Court of Appeals held that the decision in *DeRose v DeRose*, 249 Mich App 388 (2002), which found MCL 722.27b unconstitutional, should be retroactively applied. In *Johnson*, the defendant moved his children to another state in violation of the trial court's grandparent visitation order. ___ Mich App at ___. The lower court found the defendant in contempt* of court for failing to comply with the court's grandparent visitation order. The defendant argued that the order was void *ab initio* because the court's order was entered pursuant to MCL 722.27b, which was found unconstitutional in *DeRose*, *supra*. The Court of Appeals stated:

“[W]e find that the *DeRose* decision clearly established a new principle of law by addressing for the first time the constitutionality of MCL 722.27b and declaring the statute unconstitutional. We also find that the purpose of the *DeRose* decision would best be served by giving it full retroactive application.

. . .

“[T]he effect of *DeRose* being given full retroactive application is only to terminate those [grandparent] visitation rights. And so we hold that the *DeRose* decision should be applied retroactively. Accordingly, we vacate the trial court's . . . order granting plaintiffs grandparenting time as it is void *ab initio*.” ___ Mich App at _____. (Internal citations omitted.)

*For a discussion of the Court's contempt holding, see the April 2004 update to the *Contempt of Court Benchbook (Revised Edition)* (MJJI, 2000).

CHAPTER 6

Formal Placement and Action on the Adoption Petition

6.7 Grandparent Visitation

Insert the following text on page 207, immediately before Section 6.8:

*For a discussion of the Court's contempt holding, see the April 2004 update to the *Contempt of Court Benchbook (Revised Edition)* (MJL, 2000).

In *Johnson v White*, ___ Mich App ___, ___ (2004), the Court of Appeals held that the decision in *DeRose v DeRose*, 249 Mich App 388 (2002), which found MCL 722.27b unconstitutional, should be retroactively applied. In *Johnson*, the defendant moved his children to another state in violation of the trial court's grandparent visitation order. The lower court found the defendant in contempt* of court for failing to comply with the court's grandparent visitation order. The defendant argued that the order was void *ab initio* because the court's grandparent visitation order was entered pursuant to MCL 722.27b, which was found unconstitutional in *DeRose, supra*. ___ Mich App at ___. The Court of Appeals stated:

“[W]e find that the *DeRose* decision clearly established a new principle of law by addressing for the first time the constitutionality of MCL 722.27b and declaring the statute unconstitutional. We also find that the purpose of the *DeRose* decision would best be served by giving it full retroactive application.

. . .

“[T]he effect of *DeRose* being given full retroactive application is only to terminate those [grandparent] visitation rights. And so we hold that the *DeRose* decision should be applied retroactively. Accordingly, we vacate the trial court's . . . order granting plaintiffs grandparenting time as it is void *ab initio*.” ___ Mich App at ___. (Internal citations omitted.)

Update: Child Protective Proceedings Benchbook (Revised Edition)

CHAPTER 5

Notice & Time Requirements

5.4 Notice of Hearings in Child Protective Proceedings

Initial disposition hearings and review hearings.

Effective February 25, 2004, MCR 3.975(B) was amended. Near the bottom of page 134, replace the quote of MCR 3.975(B) with the following text:

“(B) *Notice.* The court shall ensure that written notice of a dispositional review hearing is given to the appropriate persons in accordance with MCR[] 3.920 and MCR 3.921(B)(2). The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties.”

Permanency planning hearings and hearings on termination of parental rights.

Effective February 25, 2004, MCR 3.976(C) was amended. On page 135, replace the quote of MCR 3.976(C) with the following quote and insert the additional text:

“(C) *Notice.* Written notice of a permanency planning hearing must be given as provided in MCR 3.920 and MCR 3.921(B)(2). The notice must include a brief statement of the purpose of the hearing, and must include a notice that the hearing may result in further proceedings to terminate parental rights. The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties.”

Effective February 25, 2004, the Supreme Court also amended MCR 3.977(C). MCR 3.977(C), governing termination of parental rights, states:

“(C) Notice; Priority.

(1) Notice must be given as provided in MCR 3.920 and MCR 3.921(B)(3).

(2) Hearings on petitions seeking termination of parental rights shall be given the highest possible priority consistent with the orderly conduct of the court’s caseload.”

CHAPTER 7

Preliminary Hearings

7.5 Appointment of Lawyer-Guardians Ad Litem for Children

On page 186, replace the first full paragraph and the quote of MCR 3.915(B)(2)(a) with the following text:

The court rule governing appointment of lawyer-guardians ad litem, MCR 3.915(B)(2), references the statute and requires that the court appoint a lawyer-guardian ad litem for the preliminary hearing. Effective February 25, 2004, MCR 3.915 was amended. Amended MCR 3.915(B)(2)(a) requires that the court ask the lawyer-guardian ad litem, at each hearing, if he or she has met with the child as required by MCL 712A.17d(1)(d), and if the lawyer-guardian ad litem has not met with the child, he or she must state the reasons for failing to do so on the record. The Staff Comment on this amendment states that it “is designed to enforce the statutory requirement in MCL 712A.17d that lawyers-guardians ad litem for children meet with their clients before each hearing.” MCR 3.915(B)(2)(a) states:

“(2) **Child.**

(a) The court must appoint a lawyer-guardian ad litem to represent the child at every hearing, including the preliminary hearing. The child may not waive the assistance of a lawyer-guardian ad litem. The duties of the lawyer-guardian ad litem are as provided by MCL 712A.17d. At each hearing, the court shall inquire whether the lawyer-guardian ad litem has met with the child, as required by MCL 712A.17d(1)(d) and if the attorney has not met with the child, the court shall require the lawyer-guardian ad litem to state, on the record, his or her reasons for failing to do so.

MCR 3.915(D) was also amended. The amended rule allows another attorney to temporarily substitute for the lawyer-guardian ad litem in certain circumstances. On page 186, replace the quote of MCR 3.915(D) with the following text:

“(D) *Duration.*

(1) An attorney retained by a party may withdraw only on order of the court.

(2) An attorney or lawyer-guardian ad litem appointed by the court to represent a party shall serve until discharged by

the court. The court may permit another attorney to temporarily substitute for the child's lawyer-guardian ad litem at a hearing, if that would prevent the hearing from being adjourned, or for other good cause. Such a substitute attorney must be familiar with the case and, for hearings other than a preliminary hearing or emergency removal hearing, must review the agency case file and consult with the foster parents and caseworker before the hearing unless the child's lawyer-guardian ad litem has done so and communicated that information to the substitute attorney. The court shall inquire on the record whether the attorneys have complied with the requirements of this subrule."

CHAPTER 7

Preliminary Hearings

7.10 Required Procedures at Preliminary Hearings

Insert the following new subsections on page 193 before Section 7.11:

I. Inquiring About the Father's Identity

Effective February 25, 2004, if the child's father has not been identified, the court must ask the mother about the identity and whereabouts of the father. MCR 3.965(B)(13).

J. Inquiring About Relative Caregivers

"The court must inquire of the parent, guardian, or legal custodian regarding the identity of relatives of the child who might be available to provide care." MCR 3.965(B)(13).

CHAPTER 8

Placement of a Child

8.6 Required Advice Concerning Initial Service Plans

Effective February 25, 2004, MCR 3.965(E) was amended. Beginning on the bottom of page 210, replace the quote of MCR 3.965(E) with the following text:

“(E) *Advice; Initial Service Plan.* If placement is ordered, the court must, orally or in writing, inform the parties:

“(1) that the agency designated to care and supervise the child will prepare an initial service plan no later than 30 days after the placement;

“(2) that participation in the initial service plan is voluntary unless otherwise ordered by the court;

“(3) that the general elements of an initial service plan include:

(a) the background of the child and the family,

(b) an evaluation of the experiences and problems of the child,

(c) a projection of the expected length of stay in foster care, and

(d) an identification of specific goals and projected time frames for meeting the goals; and

“(4) that, on motion of a party, the court will review the initial service plan and may modify the plan if it is in the best interests of the child.

“The court shall direct the agency to identify, locate, and consult with relatives to determine if placement with a relative would be in the child’s best interests, as required by MCL 722.954a(2). In a case to which MCL 712A.18f(6) applies, the court shall require the agency to provide the name and address of the child’s attending physician of record or primary care physician.”*

*See Sections 8.2 and 8.11(B) for discussions of MCL 722.954a(2). For a discussion of MCL 712A.18(f)(6), see Section 13.6.

CHAPTER 17

Permanency Planning Hearings

17.3 Time Requirements

Effective February 25, 2004, MCR 3.976(B)(3) was amended. Near the bottom of page 362, replace the quote of MCR 3.976(B)(3) with the following:

“(3) Requirement of Annual Permanency Planning Hearings. During the continuation of foster care, the court must hold permanency planning hearings beginning no later than one year after the initial permanency planning hearing. The interval between permanency planning hearings is within the discretion of the court as appropriate to the circumstances of the case, but must not exceed 12 months. The court may combine the permanency planning hearing with a dispositional review hearing.”

CHAPTER 17

Permanency Planning Hearings

17.5 Court's Options Following Permanency Planning Hearings

Second decision: determine whether to initiate proceedings to terminate parental rights.

Effective February 25, 2004, MCR 3.976(E)(2) was amended. Near the bottom of page 368, replace the quote of MCR 3.976(E)(2) with the following:

“(2) Continuing Foster Care Pending Determination on Termination of Parental Rights. If the court determines at a permanency planning hearing that the child should not be returned home, it must order the agency to initiate proceedings to terminate parental rights, unless the agency demonstrates to the court and the court finds that it is clearly not in the best interests of the child to presently begin proceedings to terminate parental rights. The order must specify the time within which the petition must be filed, which may not be more than 42 days after the date of the order.”

CHAPTER 18

Hearings on Termination of Parental Rights

In this chapter. . .

Effective February 25, 2004, MCR 3.977 was amended. In the middle of page 374, after the quote of MCR 3.977(A)(1), insert the following text:

MCR 3.977(C)(2) states:

“Hearings on petitions seeking termination of parental rights shall be given the highest possible priority consistent with the orderly conduct of the court’s caseload.”

Update: Contempt of Court Benchbook (Revised Edition)

CHAPTER 5

Common Forms of Contempt of Court

5.6 Violation of Court Orders

C. Even Clearly Incorrect Orders Must Be Obeyed

Insert the following text at the end of Section 5.6(C), on page 51:

In *Johnson v White*, ___ Mich App ___, ___ (2004), the Court of Appeals reversed a lower court's finding of contempt against a defendant for violating the court's order for grandparent visitation. On January 10, 2001, the lower court entered an order for grandparent visitation. Three months later, the defendant violated the order by moving his children to another state. On January 25, 2002, the Court of Appeals issued its decision in *DeRose v DeRose*, 249 Mich App 388 (2002), which found the grandparent visitation statute, MCL 722.27b, unconstitutional. On March 28, 2002, the lower court found the defendant in contempt of court for violating its order. The trial court subsequently denied the defendant's motion to vacate the contempt order.

The defendant argued on appeal that the contempt order should have been vacated because the lower court lacked subject matter jurisdiction over the grandparent visitation issue because of the Court of Appeals decision in *DeRose v DeRose*, *supra*. The defendant claimed that MCR 7.215(C)(2) required the lower court to give immediate precedential effect to *DeRose* even though, at the time of the show-cause hearing, an appeal of the decision in *DeRose* was pending in the Supreme Court. MCR 7.215(C)(2) states that a published Court of Appeals opinion has precedential effect and the "filing of an application for leave to appeal to the Supreme Court or a Supreme Court order granting leave to appeal does not diminish the precedential effect of a published opinion" *Johnson, supra* at ___. The trial court disagreed and ruled that MCR 7.215(C)(2) should be read in conjunction with MCR 7.215(F)(1)(a), which states that a "Court of Appeals judgment is effective after the expiration of the time for filing a timely application for leave to

appeal the Supreme Court, or, . . . after the disposition of the case by the Supreme Court.” *Johnson, supra* at ____.

The Court of Appeals found the trial court’s reliance on MCR 7.215(F)(1)(a) misplaced. The Court of Appeals stated that MCR 7.215(F)(1)(a) “pertains to the timing of when our judgment becomes final in regards to the parties to the appeal and its enforceability as to those parties by the trial court that presided over the case.” *Johnson, supra* at _____. The Court also indicated that MCR 7.215(C)(2) clearly provides that filing an application for leave to appeal to the Supreme Court or an order granting leave does not change the precedential effect of the decision of the Court of Appeals. The Court concluded that the trial court erred in determining that it did not need to give *DeRose, supra*, precedential effect.

The Court of Appeals, citing *Kirby v Michigan High School Athletic Ass’n*, 459 Mich 23, 40 (1998), recognized that an order of the court must be complied with at the time it is entered even if the order is clearly incorrect. Quoting *In re Contempt of Dudzinski*, 257 Mich App 96, 111 (2003), the Court also recognized that “[a] person may not disregard a court order simply on the basis of his [or her] subjective view that the order is wrong or will be declared invalid on appeal.” *Johnson, supra* at _____. However, the Court noted that these rules only apply to “an order issued by a court *with jurisdiction over the subject matter* and the person.” (Emphasis in original.) At the time the defendant was held in contempt, the opinion in *DeRose, supra*, had already been issued. Therefore, *DeRose* had binding precedential effect, and the lower court was without jurisdiction over the subject matter of the contempt order. Because the lower court lacked subject matter jurisdiction when it entered the contempt order, the Court of Appeals reversed the lower court’s finding of contempt. *Johnson, supra* at _____.

April 2004

Update: Criminal Procedure Monograph 5—Preliminary Examinations (Revised Edition)

Part A—Commentary

5.30 Examination of Witnesses

Insert the following language after the second paragraph on page 42:

Effective March 4, 2004, 2004 PA 20 added section 11a to the statutory provisions governing preliminary examination testimony. MCL 760.11a provides:

“On motion of either party, the magistrate may permit the testimony of an expert witness or, upon a showing of good cause, any witness to be conducted by means of telephonic, voice, or video conferencing.”

April 2004

Update: Criminal Procedure Monograph 6—Pretrial Motions (Revised Edition)

Part 2—Individual Motions

6.18 Motion to Suppress Confession Because of a *Miranda* Violation

4. Interrogation After *Miranda* Rights Have Been Invoked

Insert the following case summary at the bottom of page 34:

Edwards v Arizona, 451 US 477 (1981), does not apply to a suspect who was not in continuous custody during the time between the suspect's first interrogation, at which he invoked his right to counsel and denied involvement in the crime, and the suspect's second interrogation 11 days later, at which the suspect acknowledged and waived his right to counsel and implicated himself in the crime. *People v Harris*, ___ Mich App ___, ___ (2004). In *Harris*, the defendant asserted that his request for counsel at his first interrogation precluded his ability to make a valid waiver of that right at his second interrogation because *Edwards* required that once a defendant had invoked his right to counsel, he could not be questioned again until he first consulted with an attorney. *Harris, supra*, ___ Mich App at ___. The Court of Appeals concluded that *Edwards* did not apply to defendants who, like the defendant in *Harris*, were not held in continuous custody between interrogations and were properly apprised of their rights before each interrogation. *Harris, supra*, ___ Mich App at ___.

6.18 Motion to Suppress Confession Because of a *Miranda* Violation

6. The Requirements for a Valid Waiver of *Miranda* Rights

Insert the following case summary after the second full paragraph on page 36:

The “valid waiver rule” of *Edwards v Arizona*, 451 US 477 (1981), does not apply to the subsequent interrogation of a suspect who was not held in continuous custody between his first interrogation, at which he requested counsel and denied involvement in the crime, and his second interrogation 11 days later, at which he acknowledged his right to counsel and implicated himself in the crime. *People v Harris*, ___ Mich App ___, ___ (2004). Notwithstanding the time that passed between interrogations in *Harris* and the fact that the defendant was not held in custody during that time, the Court found that the prosecution had established by a preponderance of the evidence that the defendant executed a valid waiver of his right to counsel at the second interrogation. *Harris, supra*, ___ Mich App at ___. Two police officers involved in the defendant’s interrogation refuted the defendant’s claim that he requested counsel at the second interrogation, and the prosecution’s evidence included the defendant’s videotaped acknowledgement of his right to counsel and a signed waiver of that right. *Harris, supra*, ___ Mich App at ___.

6.30 Motion to Suppress Eyewitness Identification at Trial Because of Illegal Pretrial Identification Procedure

2. Impermissible Suggestiveness and Due-Process Limitations

Insert the following case summary after the partial paragraph at the top of page 70:

Absent any improper suggestions or the provision of a photograph of the defendant following the complainant's failure to make a definitive identification of the defendant at a lineup, a prosecutor's post-lineup communication with the complainant did not violate the defendant's due process rights. *People v Harris*, ___ Mich App ___, ___ (2004). In *Harris*, the complainant attended a pretrial lineup in which the defendant was participant number six. *Harris, supra*, ___ Mich App at ___. The complainant recognized number six in the lineup but did not identify him with certainty as the man who robbed a gas station and shot her. *Harris, supra*, ___ Mich App at ___. On the day after the lineup, the complainant told the police that she was sure that number six was the armed robber. The prosecutor then met with the complainant to confirm the information she communicated to the police. *Harris, supra*, ___ Mich App at ___. The prosecutor asked only whether the complainant was sure she could identify the armed robber in court; the prosecutor did not suggest that she was correct in her identification of number six nor did the prosecutor show the complainant a photograph of the defendant that would cast doubt on her later in-court identification of him. *Harris, supra*, ___ Mich App at ___. The Court explained:

“Here, complainant's identification of defendant was based on her memory of the incident because the prosecutor never made an improper suggestion, implication or assertion to the complainant that defendant had committed the crime or that the case would not proceed without her positively identifying defendant. The police and prosecutor did not meet with the complainant until after she contacted police to inform them that she could positively identify number six, defendant, as the person who shot her and robbed the gas station. Then at that meeting, the prosecutor simply asked the complainant whether she could identify in court, the person she alleged she could identify as the perpetrator of the robbery and shooting. Therefore, we find that the trial court did not clearly err in denying defendant's motions to disqualify the prosecutor's office and his motion to exclude the in-court identification.” *Harris, supra*, ___ Mich App at ___.

6.34 Motion to Quash Information for Improper Bindover

Insert the following language on page 81 immediately before Section 6.35:

A defendant may not appeal a trial court's ruling on his motions to quash several charges against him after he was convicted of the charges at trial. *People v Wilson*, ___ Mich ___, ___ (2004). The Court stated:

“If a defendant is fairly convicted at trial, no appeal lies regarding whether the evidence at the preliminary examination was sufficient to warrant a bindover.” [citations omitted.] *Wilson, supra*, ___ Mich at ___.

April 2004

Update: Juvenile Justice Benchbook (Revised Edition)

CHAPTER 25

Recordkeeping & Reporting Requirements

25.18 Recordkeeping Requirements of the Sex Offenders Registration Act

L. Pertinent Case Law Challenging Registration Act

On page 539, immediately before the paragraph beginning “**Due process under Michigan Constitution**,” insert the following text:

Due process under U.S. Constitution. In *Fullmer v Michigan Dep’t of State Police*, ___ F3d ___, ___ (CA 6, 2004), the Court held that the public registry provisions of Michigan’s Sex Offenders Registration Act do not violate the procedural due process standards for sex offender registries that were set forth in *Connecticut Dep’t of Public Safety v Doe*, 538 US 1 (2003).*

*See the May 2003 update for a detailed discussion of *Connecticut Dep’t of Public Safety v Doe*.

Update: Juvenile Traffic Benchbook

CHAPTER 8

Procedures for Civil Infractions

8.30 Civil Fines

Replace the second paragraph on page 8-36 with the following language:

As a general rule, if a person is determined to be responsible or responsible with explanation for a civil infraction, the civil fine shall not be more than \$100 plus costs. MCL 257.907(2). Fines for moving violations are doubled if the violation occurs in a work zone, at an emergency scene, or in a school zone (during certain periods). See MCL 257.601b.

Note: Effective January 9, 2004, 2003 PA 314 replaced references to “construction zone” in MCL 257.601b with references to “work zone.” MCL 257.79d defines “work zone.” 2003 PA 315, effective April 8, 2004.

CHAPTER 9

Elements of Selected Criminal Traffic Offenses

9.10 Failing to Stop at Signal of Police Officer (“Fleeing and Eluding”)

D. Issues

Insert the following case summary after the first paragraph in Section 9.10(D) near the middle of page 9-19:

Whether sufficient evidence exists to bind over a defendant for fleeing and eluding depends on “the type of signal given and the context in which it occurs[.]” *People v Green*, ___ Mich App ___, ___ (2004). In *Green*, the defendant moved to quash the information against him for fleeing and eluding on the grounds that the police officer and the police vehicle failed to satisfy the statutory requirement that both the vehicle and the officer be “plainly or clearly marked” at the time of the incident. *Green, supra*, ___ Mich App at ___. The trial court granted the defendant’s motion because the police officer who ordered the defendant to stop “was not in or near his police vehicle at the time defendant left the area.” *Green, supra*, ___ Mich App at ___.

The Court of Appeals reversed the trial court’s ruling and explained that the plain language of the fleeing and eluding statute requires a driver to stop when given a visual or audible signal by a police officer. *Green, supra*, ___ Mich App at ___. The officer’s signal may be given by hand, voice, emergency light, or siren, but the Court emphasized that MCL 750.479a “does not require that this signal to the driver of a motor vehicle be given *from within* the officer’s officially identified police vehicle.” *Green, supra*, ___ Mich App at ___ (emphasis in original). The Court further explained that the “fair and natural import” of the statutory language indicates that if the signal to stop is given by an officer away from that officer’s vehicle, the statute requires that the officer be in uniform. *Green, supra*, ___ Mich App at ___. Similarly, “if the signal occurs by emergency light or siren, that signal must come from an officially identified police vehicle in order to hold a driver accountable for the offense of fleeing and eluding.” *Green, supra*, ___ Mich App at ___.

Update: Sexual Assault Benchbook

CHAPTER 7

General Evidence

7.6 Former Testimony of Unavailable Witness

Insert the following text after the second full paragraph on page 364, which cites *People v Meredith*:

The admission of prior testimonial statements violates a defendant's constitutional right to confrontation unless the prior statements were subject to cross-examination by the defendant and the person who made the statements is unavailable to testify. For confrontation clause purposes, the reliability of prior testimonial statements must not be determined by reference to rules of evidence governing admissibility of hearsay evidence, or by whether the statements bear "particularized guarantees of trustworthiness." *Crawford v Washington*, ___ US ___, ___ (2004). In *Crawford*, the United States Supreme Court overruled *Ohio v Roberts*, 448 US 56 (1980), which held that admission of an unavailable witness's prior statements did not violate the Sixth Amendment if the statements bear "adequate indicia of reliability." The Court declined to provide a comprehensive definition of "testimonial statement"; however, the Court stated:

"Whatever else the term covers, it applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations." *Id.* at ___.

CHAPTER 11

Sex Offender Identification and Profiling Systems

11.2 Sex Offenders Registration Act

L. Pertinent Case Law Challenging Registration Act

4. Double Jeopardy, Equal Protection, and Due Process Under U.S. Constitution

Replace the last paragraph on page 529 and the text on page 530 with the following text:

In *Fullmer v Michigan Dep't of State Police*, ___ F3d ___, ___ (CA 6, 2004), the Court held that the public registry provisions of Michigan's Sex Offenders Registration Act do not violate the procedural due process standards for sex offender registries that were set forth in *Connecticut Dep't of Public Safety v Doe*, 538 US 1 (2003).*

*See the April 2003 update for a detailed discussion of *Connecticut Dep't of Public Safety v Doe*.

April 2004

Update: Traffic Benchbook— Revised Edition, Volume 1

CHAPTER 1

Required Procedures for Civil Infractions

Part F—Civil Sanctions and Licensing Sanctions

1.34 Civil Fines

Replace the last sentence of the second paragraph on page 1-40 with the following language:

Fines for moving violations are doubled if the violation occurs in a work zone, at an emergency scene, or in a school zone (during certain periods). See MCL 257.601b.

Effective January 9, 2004, 2003 PA 314 replaced references to “construction zone” in MCL 257.601b with references to “work zone.” Effective April 8, 2004, 2003 PA 315 added section 79d to the vehicle code, which provides the following definition of “work zone”:

“‘Work zone’ means a portion of a street or highway that meets any of the following:

“(a) Is between a ‘work zone begins’ sign and an ‘end road work’ sign.

“(b) For construction, maintenance, or utility work activities conducted by a work crew and more than 1 moving vehicle, is between a ‘begin work convoy’ sign and an ‘end work convoy’ sign.

“(c) For construction, maintenance, surveying, or utility work activities conducted by a work crew and 1 moving or stationary vehicle exhibiting a rotating beacon or strobe light, is between the following points:

“(i) A point that is 150 feet behind the rear of the vehicle or that is the point from which the beacon or strobe light is first visible on the street or highway behind the vehicle, whichever is closer to the vehicle.

“(ii) A point that is 150 feet in front of the front of the vehicle or that is the point from which the beacon or strobe light is first visible on the street or highway in front of the vehicle, whichever is closer to the vehicle.” MCL 257.79d.

CHAPTER 2

Civil Infractions

2.3 Overtaking or Passing

D. Civil Sanctions for Overtaking or Passing Violations

1. Standard civil sanctions for overtaking or passing violations

Replace the last sentence of the text in #1 on page 2-8 with the following:

Fines for moving violations are doubled if the violation occurs in a work zone, at an emergency scene, or in a school zone (during certain periods). See MCL 257.601b. (**Note:** Effective January 9, 2004, 2003 PA 314 replaced references to “construction zone” in MCL 257.601b with references to “work zone.” MCL 257.79d defines “work zone.”* 2003 PA 315, effective April 8, 2004.)

*See the April 2004 update to Section 1.34 for the definition of “work zone.”

CHAPTER 2

Civil Infractions

2.5 Railroad Crossings

D. Civil Sanctions for Railroad Crossing Violations

1. Standard civil sanctions for railroad crossing violations

Replace the text in #1 near the middle of page 2-16 with the following:

1. As a general rule, if a person is determined to be responsible or responsible with explanation for a civil infraction, the civil fine shall not be more than \$100 plus costs. MCL 257.907(2). Fines for moving violations are doubled if the violation occurs in a work zone, at an emergency scene, or in a school zone (during certain periods). See MCL 257.601b.

Note: Effective January 9, 2004, 2003 PA 314 replaced references to “construction zone” in MCL 257.601b with references to “work zone.” MCL 257.79d defines “work zone.”* 2003 PA 315, effective April 8, 2004.

*See the April 2004 update to Section 1.34 for the definition of “work zone.”

CHAPTER 2

Civil Infractions

2.6 Right-of-Way or Failure to Yield

J. Civil Sanctions for Right-of-Way or Failure to Yield Violations

1. Standard civil sanctions for right-of-way or failure to yield violations

Replace the text in #1 at the bottom of page 2-20 with the following:

1. As a general rule, if a person is determined to be responsible or responsible with explanation for a civil infraction, the civil fine shall not be more than \$100 plus costs. MCL 257.907(2). Fines for moving violations are doubled if the violation occurs in a work zone, at an emergency scene, or in a school zone (during certain periods). See MCL 257.601b.

Note: Effective January 9, 2004, 2003 PA 314 replaced references to “construction zone” in MCL 257.601b with references to “work zone.” MCL 257.79d defines “work zone.”* 2003 PA 315, effective April 8, 2004.

*See the April 2004 update to Section 1.34 for the definition of “work zone.”

CHAPTER 2

Civil Infractions

2.8 Speed Violations

B. Absolute Speed Laws

Replace the text of the second bullet on page 2-28 with the following:

- 45 mph—work zones* due to highway construction, maintenance, or surveying, MCL 257.627(9).

*Effective April 8, 2004, 2003 PA 315, MCL 257.79d defines “work zone” as the phrase is used in MCL 257.627(9).

2.8 Speed Violations

D. Speed Violations

Replace the text of the fourth bullet on page 2-29 with the following:

- exceeding speed limit in work zone,* MCL 257.627(9);

*Effective April 8, 2004, 2003 PA 315, MCL 257.79d defines “work zone” as the phrase is used in MCL 257.627(9).

2.8 Speed Violations

F. Civil Sanctions for Speed Violations

1. Standard civil sanctions for speed violations

Replace the text in #1 near the middle of page 2-30 with the following:

1. As a general rule, if a person is determined to be responsible or responsible with explanation for a civil infraction, the civil fine shall not be more than \$100 plus costs. MCL 257.907(2). Fines for moving violations are doubled if the violation occurs in a work zone, at an emergency scene, or in a school zone (during certain periods). See MCL 257.601b.

Note: Effective January 9, 2004, 2003 PA 314 replaced references to “construction zone” in MCL 257.601b with references to “work zone.” MCL 257.79d defines “work zone.”* 2003 PA 315, effective April 8, 2004.

*See the April 2004 update to Section 1.34 for the definition of “work zone.”

CHAPTER 2

Civil Infractions

2.9 Stop and Go, Signs and Signals

D. Civil Sanctions for Stop and Go, Sign and Signal Violations

1. Standard civil sanctions for stop and go, sign and signal violations

Replace the text in #1 at the bottom of page 2-38 with the following:

1. As a general rule, if a person is determined to be responsible or responsible with explanation for a civil infraction, the civil fine shall not be more than \$100 plus costs. MCL 257.907(2). Fines for moving violations are doubled if the violation occurs in a work zone, at an emergency scene, or in a school zone (during certain periods). See MCL 257.601b.

Note: Effective January 9, 2004, 2003 PA 314 replaced references to “construction zone” in MCL 257.601b with references to “work zone.” MCL 257.79d defines “work zone.”* 2003 PA 315, effective April 8, 2004.

*See the April 2004 update to Section 1.34 for the definition of “work zone.”

CHAPTER 2

Civil Infractions

2.10 Turning and Signaling

H. Civil Sanctions for Turning and Signaling Violations

1. Standard civil sanctions for turning and signaling violations

Replace the text in #1 at the top of page 2-42 with the following:

1. As a general rule, if a person is determined to be responsible or responsible with explanation for a civil infraction, the civil fine shall not be more than \$100 plus costs. MCL 257.907(2). Fines for moving violations are doubled if the violation occurs in a work zone, at an emergency scene, or in a school zone (during certain periods). See MCL 257.601b.

Note: Effective January 9, 2004, 2003 PA 314 replaced references to “construction zone” in MCL 257.601b with references to “work zone.” MCL 257.79d defines “work zone.”* 2003 PA 315, effective April 8, 2004.

*See the April 2004 update to Section 1.34 for the definition of “work zone.”

CHAPTER 2

Civil Infractions

2.11 Wrong Side or Wrong Way

E. Civil Sanctions for Wrong Side or Wrong Way Violations

1. Standard civil sanctions for wrong side or wrong way violations

Replace the text in #1 at the top of page 2-45 with the following:

1. As a general rule, if a person is determined to be responsible or responsible with explanation for a civil infraction, the civil fine shall not be more than \$100 plus costs. MCL 257.907(2). Fines for moving violations are doubled if the violation occurs in a work zone, at an emergency scene, or in a school zone (during certain periods). See MCL 257.601b.

Note: Effective January 9, 2004, 2003 PA 314 replaced references to “construction zone” in MCL 257.601b with references to “work zone.” MCL 257.79d defines “work zone.”* 2003 PA 315, effective April 8, 2004.

*See the April 2004 update to Section 1.34 for the definition of “work zone.”

CHAPTER 2

Civil Infractions

2.12 Careless Driving

C. Civil Sanctions

1. Standard civil sanctions for careless driving

Replace the text in #1 near the middle of page 2-46 with the following:

1. As a general rule, if a person is determined to be responsible or responsible with explanation for a civil infraction, the civil fine shall not be more than \$100 plus costs. MCL 257.907(2). Fines for moving violations are doubled if the violation occurs in a work zone, at an emergency scene, or in a school zone (during certain periods). See MCL 257.601b.

Note: Effective January 9, 2004, 2003 PA 314 replaced references to “construction zone” in MCL 257.601b with references to “work zone.” MCL 257.79d defines “work zone.”* 2003 PA 315, effective April 8, 2004.

*See the April 2004 update to Section 1.34 for the definition of “work zone.”

CHAPTER 2

Civil Infractions

2.13 Coasting

C. Civil Sanctions

1. Standard civil sanctions for coasting

Replace the text in #1 beginning at the bottom of page 2-47 with the following:

1. As a general rule, if a person is determined to be responsible or responsible with explanation for a civil infraction, the civil fine shall not be more than \$100 plus costs. MCL 257.907(2). Fines for moving violations are doubled if the violation occurs in a work zone, at an emergency scene, or in a school zone (during certain periods). See MCL 257.601b.

Note: Effective January 9, 2004, 2003 PA 314 replaced references to “construction zone” in MCL 257.601b with references to “work zone.” MCL 257.79d defines “work zone.”* 2003 PA 315, effective April 8, 2004.

*See the April 2004 update to Section 1.34 for the definition of “work zone.”

CHAPTER 2

Civil Infractions

2.14 Driving Over Fire Hose

C. Civil Sanctions

1. Standard civil sanctions for driving over fire hose

Replace the text in #1 on page 2-49 with the following:

1. As a general rule, if a person is determined to be responsible or responsible with explanation for a civil infraction, the civil fine shall not be more than \$100 plus costs. MCL 257.907(2). Fines for moving violations are doubled if the violation occurs in a work zone, at an emergency scene, or in a school zone (during certain periods). See MCL 257.601b.

Note: Effective January 9, 2004, 2003 PA 314 replaced references to “construction zone” in MCL 257.601b with references to “work zone.” MCL 257.79d defines “work zone.”* 2003 PA 315, effective April 8, 2004.

*See the April 2004 update to Section 1.34 for the definition of “work zone.”

CHAPTER 2

Civil Infractions

2.16 Failing to Stop for School Bus

D. Civil Sanctions

1. Standard civil sanctions for failing to stop for a school bus

Replace the text in #1 near the middle of page 2-52 with the following:

1. As a general rule, if a person is determined to be responsible or responsible with explanation for a civil infraction, the civil fine shall not be more than \$100 plus costs. MCL 257.907(2). Fines for moving violations are doubled if the violation occurs in a work zone, at an emergency scene, or in a school zone (during certain periods). See MCL 257.601b.

Note: Effective January 9, 2004, 2003 PA 314 replaced references to “construction zone” in MCL 257.601b with references to “work zone.” MCL 257.79d defines “work zone.”* 2003 PA 315, effective April 8, 2004.

*See the April 2004 update to Section 1.34 for the definition of “work zone.”

CHAPTER 2

Civil Infractions

2.17 Following a Fire Truck Too Closely

C. Civil Sanctions

1. Standard civil sanctions for following a fire truck too closely

Replace the text in #1 at the top of page 2-54 with the following:

1. As a general rule, if a person is determined to be responsible or responsible with explanation for a civil infraction, the civil fine shall not be more than \$100 plus costs. MCL 257.907(2). Fines for moving violations are doubled if the violation occurs in a work zone, at an emergency scene, or in a school zone (during certain periods). See MCL 257.601b.

Note: Effective January 9, 2004, 2003 PA 314 replaced references to “construction zone” in MCL 257.601b with references to “work zone.” MCL 257.79d defines “work zone.”* 2003 PA 315, effective April 8, 2004.

*See the April 2004 update to Section 1.34 for the definition of “work zone.”

CHAPTER 5

Snowmobiles

Part B—Traffic Offenses in the Snowmobile Act

5.11 Equipment Requirements

Add the following language to the second bullet on page 5-11:

Effective March 22, 2004, 2004 PA 29 amended MCL 324.82131(1) to include a provision prohibiting a person from covering a snowmobile's headlight with a lens cap of any color.

CHAPTER 6

Marine Vessels and Personal Watercraft (PWC)

Part B—Traffic Offenses in the Marine Safety Act

6.19 Failure to Report Accidents or Give Assistance at Accidents

Insert the following language as the new third bullet on page 6-24:

- Effective April 1, 2004, 2003 PA 231 provides additional penalties for the failure of a vessel's operator to satisfy the reporting requirements of MCL 324.80133 and 324.80134. MCL 324.80134a(1) states:

“The operator of a vessel who knows or who has reason to believe that he or she has been involved in an accident resulting in serious impairment of a body function or death of a person shall immediately stop his or her vessel at the scene of the accident and shall remain there until the requirements of sections 80133 and 80134 are fulfilled.”

A person who violates MCL 324.80134a(1) is guilty of a felony punishable by not more than five years of imprisonment, a fine of not more than \$5,000.00, or both. MCL 324.80134a(2).

A person who violates MCL 324.80134a(1) following an accident caused by that person that results in another person's death is guilty of a felony punishable by not more than 15 years, a fine of not more than \$10,000.00, or both. MCL 324.80134a(3).

Update: Traffic Benchbook— Revised Edition, Volume 2

Part II—Felony Traffic Offenses

CHAPTER 7

Felony Offenses in the Michigan Vehicle Code

7.4 Failing to Stop at Signal of Police Officer (“Fleeing and Eluding”)

E. Issues

Insert the following case summary on page 7-11 immediately before subsection (F):

Whether sufficient evidence exists to bind over a defendant for fleeing and eluding depends on “the type of signal given and the context in which it occurs[.]” *People v Green*, ___ Mich App ___, ___ (2004). In *Green*, the defendant moved to quash the information against him for fleeing and eluding on the grounds that the police officer and the police vehicle failed to satisfy the statutory requirement that both the vehicle and the officer be “plainly or clearly marked” at the time of the incident. *Green, supra*, ___ Mich App at ___. The trial court granted the defendant’s motion because the police officer who ordered the defendant to stop “was not in or near his police vehicle at the time defendant left the area.” *Green, supra*, ___ Mich App at ___.

The Court of Appeals reversed the trial court’s ruling and explained that the plain language of the fleeing and eluding statute requires a driver to stop when given a visual or audible signal by a police officer. *Green, supra*, ___ Mich App at ___. The officer’s signal may be given by hand, voice, emergency light, or siren, but the Court emphasized that MCL 750.479a “does not require that this signal to the driver of a motor vehicle be given *from within* the officer’s officially identified police vehicle.” *Green, supra*, ___ Mich App at ___ (emphasis in original). The Court further explained that the “fair and natural import” of the statutory language indicates that if the signal to stop is given by an officer away from that officer’s vehicle, the statute requires that

the officer be in uniform. *Green, supra*, ____ Mich App at _____. Similarly, “if the signal occurs by emergency light or siren, that signal must come from an officially identified police vehicle in order to hold a driver accountable for the offense of fleeing and eluding.” *Green, supra*, ____ Mich App at _____.